

Cynthia J Nelson, (SBN 250876)
Nelson Wegner LLP
39111 Paseo Padre Pkwy Ste. 203
Fremont, CA 94538
510-910-1619 Voice,
cjn@nelsonwegner.com

Attorney for Debtor(s)

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

In Re:) Case No. ap-05205
) Chapter 13
Charles Witherspoon)
&)
Elizabeth Witherspoon) NOTICE OF RELATED CASE
) AND MOTION FOR
Debtors) INTRADISTRICT TRANSFER FROM
) OAKLAND DIVISION TO SAN JOSE DIVISION
) PURSUANT TO BLR 1015-1
)
) HON ARTHUR S WEISBRODT
)
)

Debtors Charles and Elizabeth Witherspoon respectfully submit this Notice of Related Matter and Move this Court to transfer their recently filed Bankruptcy Case to the San Jose Division.

NOTICE IS HEREBY GIVEN THAT:

On July 18, 2008 Charles and Elizabeth Witherspoon filed an adversary proceeding against World Savings Bank, Case AP-05205. This proceeding was filed before Judge Weisbrodt, related to their Chapter 13 bankruptcy case 06-52719.

AP-05205 survived the dismissal of the underlying bankruptcy case and is still pending. Debtors filed a brief in this case through their attorney Gregory Charles on September 13, 2011.

On August 11, 2011, Charles and Elizabeth Witherspoon filed Chapter 13 case 11-48615. The case was filed in the Oakland Division.

MOTION FOR INTRADISTRICT TRANSFER

TO THE HONORABLE JUDGE ARTHUR WEISSBRODT

Debtors Charles and Elizabeth Witherspoon hereby move this Court for an intradistrict transfer of their Chapter 13 bankruptcy case 11-48615 from the Oakland Division to the San Jose Division.

Charles and Elizabeth Witherspoon's Chapter 13 case 11-48615 was filed under the mistaken belief that AP-05205 concerning disputes with their mortgage

1 lender, World Savings and successors in interest Wachovia and now Wells Fargo,
2 had been dismissed. In fact this case is still pending and a brief was filed in
this action on September 13, 2011.

3 Case 11-48615 and AP-05205 are related. Case 11-48615 was filed to stop a
foreclosure, of real property commonly described as 45237 Onondaga Dr., AP-05205
concerns defects in the same loan against the same parcel of real property.

4 It recently came to the attention of Debtors' attorney Cynthia Nelson
5 that the adversary proceeding was still in existence. Therefore Debtor's pray
that this Court will move to consolidate these actions before Judge Weissbrodt
who is already familiar with the facts and circumstances of their case.

6 **POINTS AND AUTHORITIES**

7 Debtors may seek transfer. 'Any party, plaintiff or defendant may seek a
discretionary transfer under 1404(a) for convenience and in the interest of
Justice. Ferens v. John Deere co 494 U.S. 516, 519 (1990).

8 On motions for intradistrict transfer, the court analyses the same
9 factors as for an interdistrict transfer. US v. All Funds On Deposit (ed ny
2004) 319 F.Supp 2d 290, 293.

10 Factors considered regarding an intradistrict transfer include but are
not limited to: Convenience of parties, Convenience of witnesses, judicial
economy... feasibility of consolidation with action pending elsewhere. E&J Gallo
11 winery v f & p.s.p.a (ed CA 1994) 899 F.Supp 465, 466.

12 Because bankruptcy Chapter 13 case 11-48615 includes the same parties,
Charles and Elizabeth Witherspoon and Creditor Wells Fargo, successor in
13 interest to World Savings, that are parties to AP-05205, because the two cases
concern the same real property and because debtors' Chapter 13 case was filed
14 in Oakland under the mistaken belief that AP-05205 had been dismissed, Debtors
pray that the court will transfer bankruptcy 11-48615 to the San Jose Division.

15 Respectfully submitted

16 Date: 9/29/2011

s/Cynthia J Nelson

Cynthia Nelson

Nelson Wegner LLP

Attorney for Debtors

1 **ATTORNEY DECLARATION**

2 I Cynthia Nelson Declare:

- 3 1. That I am an attorney admitted to practice before this court.
4 2. That I filed a bankruptcy for Charles and Elizabeth Witherspoon on
5 August 11, 2011.
6 3. That when I filed, I believed the Witherspoons would need to refile
7 their Adversary proceeding against Wells Fargo concerning the World
8 Savings dispute regarding the first mortgage on 45327 Onondaga Dr.
9 4. That I recently learned from attorney Gregory Charles that the
10 previous adversary proceeding was still pending in the San Jose
11 Division.
12 5. That had I known about the pending ap, I would have brought this case
13 in the San Jose division.

14 I declare all this under penalty of perjury under the laws of the State of
15 California. Executed in Oakland California.

16 Date: 9/29/2011

17 s/Cynthia J Nelson
18 Cynthia Nelson